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NO. 99-1876

IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY F. KOTERBA,
Petitioner
vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING,
Respondent

Petition for Writ of Certiorari to the
Commonwealth Court of Pennsylvania

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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19 pp

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

DOES CONGRESSIONAL CONSENT FOR THE DRIVER LICENSE COMPACT OF 1961 EXIST?

(Suggested Answer in the Affirmative)

DOES THE DRIVER LICENSE COMPACT OF 1961 REQUIRE CONGRESSIONAL CONSENT UNDER THE COMPACT CLAUSE?

(Suggested Answer in the Negative)

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COUNTERSTATEMENT OF THE CASE

This is a petition for writ of certiorari to the Commonwealth Court of Pennsylvania filed by Gregory F. Koterba (Koterba) from a decision of a three-judge panel of the Commonwealth Court of Pennsylvania. Koterba sought discretionary review of the Commonwealth Court's decision from the Supreme Court of Pennsylvania but allowance to appeal was denied by the Pennsylvania Supreme Court on February 23, 2000. Koterba filed his petition for writ of certorari with this Court on May 24, 2000.

The factual background of this case is not complex. Pennsylvania became a party state to the Driver License Compact of 1961 on December 10, 1996, when Section 1581[1] was added to Pennsylvania's Vehicle Code. On July 4, 1997, Koterba was arrested in the State of New Jersey and charged with violating N.J.S.A. 39:4-50(a) (relating to driving under the influence of liquor or drugs) (DUI) (A-22). Koterba was convicted of DUI in the State of New Jersey on September 2, 1997 (A-22). New Jersey is a party state to the Driver License Compact of 1961. N.J.S.A. 39:5D-1 through 39:5D-14. In conformity with its obligation under Article III of that Compact, N.J.S.A. 39:5D-3, the New Jersey Division of Motor Vehicles reported Koterba's DUI conviction to the Pennsylvania Department of Transportation (A-22).

Pursuant to Article IV of the Driver License Compact, 75 Pa.C.S. §1581, Article IV, the Pennsylvania Department of Transportation, Bureau of Driver Licensing, treated Koterba's New Jersey DUI conviction as if Koterba had committed his conduct in Pennsylvania and had been convicted in Pennsylvania of violating Pennsylvania's DUI

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[1] 75 Pa.C.S. §1581.

statute, 75 Pa.C.S. §3731(a) (relating to driving under the influence of alcohol or controlled substance). On September 25, 1997, the Bureau notified Koterba that, as mandated by 75 Pa.C.S. §1581, it was treating his New Jersey DUI conviction as if it was a conviction for violating 75 Pa.C.S. §3731(a) and, as mandated by 75 Pa.C.S. §1532(b)(3),[2] the Bureau was suspending Koterba's privilege to operate a motor vehicle for a period of one year (A-19). Koterba filed a statutory appeal from that suspension.

A *de novo* hearing was held on Koterba's statutory appeal before Judge Riley. At that hearing, the Bureau had admitted into evidence a packet of documents that were duly certified under seal, in conformity with the requirements of 42 Pa.C.S. §§6103 and 6109 (relating to proof of official records) and 75 Pa.C.S. §1550(d)(1) (relating to documentation). Included in the Bureau's packet of certified documents was a certified copy of the Bureau's receipt of an electronically transmitted report of Koterba's New Jersey DUI conviction. The Bureau rested with the admission of its certified documents into evidence.

Koterba did not present any evidence on his own behalf, but raised a number of challenges to the Bureau's suspension of his operating privilege. Koterba claimed that the Driver License Compact was invalid since the Congressional consent, found in 23 U.S.C. §313, had been repealed in 1966. Koterba also argued that the suspension of his operating privilege violated double jeopardy and equal protection guarantees and that the New Jersey DUI offense of which he was convicted was not "substantially similar" to Pennsylvania's DUI offense and so could not serve as the

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[2] Pursuant to 75 Pa.C.S. §1532(b)(3), the Bureau of Driver Licensing is required to suspend for one year the operating privilege of any person convicted of violating 75 Pa.C.S. §3731(a) (relating to driving under the influence of alcohol or controlled substance).

basis for the suspension of his operating privilege.

The trial court rejected all of Koterba's challenges to the Bureau's suspension action except his claim that the New Jersey DUI statute was not substantially similar to Pennsylvania's DUI statute and sustained Koterba's statutory appeal on that basis alone (A-13 through A-16). The Bureau appealed Judge Riley's decision to the Commonwealth Court of Pennsylvania.

On August 26, 1999, a three-judge panel of the Commonwealth Court reversed Judge Riley's decision and reinstated the one-year suspension. *Koterba v. Department of Transportation, Bureau of Driver Licensing*, 736 A.2d 761 (Pa. Cmwlth. 1999), *appeal denied*, 2000 Pa. LEXIS 496 (Pa. 2000). The Commonwealth Court rejected Koterba's claim that his New Jersey DUI offense could not serve as the basis for a suspension of his operating privilege under Article IV(a)(2) of the Driver License Compact and, relying upon prior Pennsylvania case law,[3] held that Koterba's New Jersey DUI offense was "substantially similar" to Pennsylvania's DUI offense for purposes of the Compact. *Koterba*, 736 A.2d at 763. The Commonwealth Court then rejected Koterba's argument that the 1966 repeal of 23 U.S.C. §313 withdrew Congressional consent for the Driver License Compact, thus invalidating the Compact under the Compact Clause of the United States Constitution.[4] The Court reasoned that the Driver License Compact did not involve an area of federal power or encroach upon federal power and, therefore, was not required to have the consent of Congress under the Compact Clause. *Koterba*, 736 A.2d at 765-766.

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[3] *See, e.g., Scott v. Department of Transportation, Bureau of Driver Licensing*, 730 A.2d 539 (Pa. Cmwlth. 1999) (*en banc*).

[4] U.S. Const., Art. I, §10, cl.3.

Koterba filed a petition for allowance of appeal from the Commonwealth Court's decision to the Supreme Court of Pennsylvania. On February 23, 2000, the Pennsylvania Supreme Court denied Koterba's petition for allowance of appeal. On May 23, 2000, Koterba filed a petition for writ of certiorari with this Court.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Review by the Supreme Court of the United States of a decision of a state court is not a matter of right but of judicial discretion. Sup. Ct. Rule 10. This Court has specified that a petition for writ of certiorari will only be granted for "compelling" reasons. *Id.* The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, submits to this Court that there are no "compelling" reasons to grant the petition of Gregory F. Koterba for a writ of certiorari to the Commonwealth Court of Pennsylvania.

To the contrary, the Bureau submits that there are a number of reasons why this Court should deny Koterba's petition for a writ of certiorari. The first reason is that, while Koterba is correct in his claim that the initial statute granting Congressional consent to the Driver License Compact, 23 U.S.C. §313, was repealed in 1966, there is another federal statute, 4 U.S.C. §112, from which Congressional consent for the Driver License Compact may be gleaned. Finally, the Commonwealth Court properly analyzed the impact of the Driver License Compact and correctly concluded that the Compact was not the type of interstate agreement that required Congressional consent under the Compact Clause of the United States Constitution and that the repeal of 23 U.S.C. §313 in 1966 had absolutely no impact upon the continuing validity or vitality of the Driver License Compact of 1961.

A. THERE IS CONGRESSIONAL CONSENT FOR THE DRIVER LICENSE COMPACT OTHER THAN FORMER 23 U.S.C. §313.

Koterba's claim that the repeal of former 23 U.S.C. §313 in 1966 withdrew Congressional consent to the Driver

License Compact of 1961 overlooks another federal statute which authorizes the Compact. Consent of Congress for reciprocal law enforcement agreements such as the Driver License Compact may be found at 4 U.S.C. §112. That statute provides:

> **§112. Compacts between States for cooperation in prevention of crime; consent of Congress**
>
> (a) The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.
>
> (b) For the purpose of this section the term "States" means the several States and Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the District of Columbia.

4 U.S.C. §112.[5]

4 U.S.C. §112 provides the advance consent of Congress to interstate cooperative agreements for law enforcement purposes; specific Congressional consent is not required for the several States to enter into such compacts. *See Opinion of the Justices*, 344 Mass. 770, 184 N.E.2d 353 (1962). Thus, while Congress provided specific advance

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[5] This statute was initially enacted in 1947 and included in Title 18 of the United States Code. *See* 61 Stat. 641. It was transferred to Title 4 of the United States Code in 1949.

consent for highway safety compacts, such as the Driver License Compact, when it enacted former 23 U.S.C. §313, that additional consent was unnecessary in view of the broad consent given by Congress in 4 U.S.C. §112 to multi-state law enforcement agreements.

The consent granted by Congress by 4 U.S.C. §112 is sufficiently broad to include multi-state agreements for the enforcement of the traffic safety provisions of their penal statutes. Traffic safety statutes are considered as penal statutes and violations of those statutes are punished by the criminal courts of the various states. *See, e.g.*, 75 Pa.C.S. §1543(a) & (b) (classification of the offense of driving while the operating privilege is suspended or revoked as a summary criminal offense); 75 Pa.C.S. §3362(c) (classification of the offense of exceeding maximum speed limits as a summary criminal offense); 75 Pa.C.S. §3731(e)(1) (classification of the offense of driving under the influence of alcohol or a controlled substance as a misdemeanor of the first or second degree). The purpose of the Driver License Compact is to enhance the effectiveness of the member states' traffic safety statutes by ensuring that an out-of-state driver who is convicted of violating a party State's traffic safety laws receives the same collateral civil consequence in terms of a suspension or revocation of that driver's privilege to drive in the driver's home or licensing state as that driver would have experienced had the driver's out-of-state offense occurred in the licensing state. 75 Pa.C.S. §1581, Article IV. The most direct beneficiary of the increased effectiveness of state traffic safety laws is, quite naturally, highway safety. This Court has repeatedly recognized that the several States have a compelling interest in promoting highway safety in general and protecting their citizens against the dangers posed by intoxicated or impaired drivers in particular. *See, e.g., South Dakota v. Neville*, 459 U.S. 553 (1983); *Mackey v. Montrym*, 443 U.S. 1 (1979).

B. The Driver License Compact of 1961 Is Not One Of The Compacts For Which Congressional Consent Is Required Under the Compact Clause Of The United States Constitution.

The final reason justifying denial of the petition for writ of certiorari in this case is that the Driver License Compact of 1961 is not one of the interstate compacts for which the consent of Congress is required under the Compact Clause of the United States Constitution. This issue was thoroughly discussed in Commonwealth Court's opinion and the Bureau respectfully submits that the Commonwealth Court's holding that Congressional consent for the Driver License Compact was not required was correct.

The standard by which this Court measures the applicability of the Compact Clause to interstate agreements was first set forth in *Virginia v. Tennessee*, 148 U.S. 503 (1893). In that case, this Court recognized that there are "many matters upon which different states may agree that can in no respect concern the United States." *Virginia v. Tennessee*, 148 U.S. at 518. The mere fact that the Congress gave its advance approval to interstate agreements such as the Driver License Compact of 1961 does not mandate a conclusion that such consent was constitutionally required. *United States Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452 (1978). Rather than looking to whether the states have submitted an interstate agreement for Congressional approval, this Court looks to the substance and potential effect of the agreement when measuring whether the Compact Clause is applicable.

> Looking at the clause in which the terms "compact" or "agreement" appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of

> political power of the states, which may encroach upon or interfere with the just supremacy of the United States.

Virginia v. Tennessee, 148 U.S. at 519. *See also New Hampshire v. Maine*, 426 U.S. 363 (1976). In *New York v. O'Neill*, 359 U.S. 1 (1959), Mr. Justice Frankfurter wrote:

> The Constitution of the United States does not preclude resourcefulness of relationships between States on matters as to which there is no grant of power to Congress and as to which the range of authority restricted within an individual State is inadequate. By reciprocal, voluntary legislation the States have invented methods to accomplish fruitful and unprohibited ends.

New York v. O'Neill, 359 U.S. at 11.

There are a number of interstate agreements for which courts have found that Congressional consent was unnecessary. In *Multistate Tax Commission*, this Court held that the Multistate Tax Compact, which was designed to promote compatibility and uniformity in state tax systems by avoiding duplicate taxation and apportioning liability of multistate taxpayers, did not purport to authorize member states to exercise any powers that they could not exercise in the agreement's absence. There was no delegation of sovereign power by the individual states to a multi-state body and nothing in the agreement encroached upon federal prerogatives. *Multistate Tax Commission*, 434 U.S. at 473. Based upon those findings, this Court upheld the validity of the Multistate Tax Compact in the absence of Congressional consent.

A number of other interstate agreements or compacts have likewise been found not to be subject to the Compact Clause because they do not encroach upon federal

prerogatives. Examples of such interstate agreements include the Uniform Law to Secure the Attendance of Witnesses from Within or Without the State in Criminal Proceedings,[6] the Interstate Compact on Placement of Children,[7] the Uniform Reciprocal Enforcement of Child Support Act[8] and the Non-Resident Violator Compact of 1977.[9] Respondent submits that the Driver License Compact of 1961 is another one of those interstate agreements for which the consent of Congress is not required under the Compact Clause.

The Driver License Compact enables its member States to share information regarding serious motor vehicle offenses committed in the party States by drivers licensed by the member States. The Driver License Compact is designed to improve the effectiveness of the member States' own traffic safety laws by having a driver's licensing or home State suspend or revoke the driver's license for serious motor vehicle offenses that are committed in the party States. Neither the exchange of driver information nor the licensing or suspension of drivers by the individual States infringes upon the supremacy of the United States. As noted by the Commonwealth Court, the licensing and denial of licenses to drivers is traditionally a function exercised by the individual States. *Koterba*, 736 A.2d at 765. No member state to the Driver License Compact of 1961 has ceded any of its sovereignty to any multi-state body or commission and Article VIII[10] provides a clear and unambiguous method by

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[6] *See New York v. O'Neill*, 359 U.S. 1 (1959).

[7] *See McComb v. Wambaugh*, 934 F.2d 474 (3d Cir. 1991).

[8] *See Fraser v. Fraser*, 415 A.2d 1304 (R.I. 1980).

[9] *See State v. Kurt*, 802 S.W.2d 954 (Mo. 1991).

[10] 75 Pa.C.S. §1581, Article VIII.

which party States may withdraw from the Driver License Compact.

The Bureau also disputes Koterba's claim that, prior to Pennsylvania's entry into the Driver License Compact, it did not suspend the operating privilege of its drivers for out-of-state moving violations. That is simply untrue. Prior to Pennsylvania's 1976 Vehicle Code, Pennsylvania sanctioned its drivers for out-of-state violations. *See, e.g., Commonwealth v. Gross*, 163 A.2d 682 (Pa. Super. 1960) (Pennsylvania driver had operating privilege suspended under Pennsylvania Vehicle Code of 1959 as a consequence of a moving violation occurring in the State of New Jersey); *Commonwealth v. Halteman*, 162 A.2d 251 (Pa. Super. 1960) (Pennsylvania driver had operating privilege suspended under Pennsylvania Vehicle Code of 1959 as a consequence of a moving violation occurring in the State of Indiana). Authority for such suspensions was found in Section 615(e) of the Pennsylvania Vehicle Code of 1959, *formerly* 75 P.S. §192(e).[11] The suspension of a Pennsylvania driver's privilege to operate a motor vehicle as a consequence of an out-of-state moving violation under former 75 P.S. §192(e) did not rely upon any interstate agreement or compact and was entirely within the police

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[11] Section 615(e) of the Pennsylvania Vehicle Code of 1959, *formerly* 75 P.S. §192(e), provided:

> The secretary is hereby authorized after a hearing before the secretary or his representative, or upon failure of the said person to appear at such hearing, to suspend the operator's license or learner's permit of any person licensed in this Commonwealth, upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this Commonwealth, would be grounds for the suspension or revocation of the license of an operator.

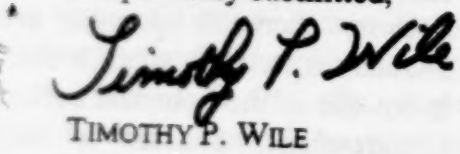
power of the Pennsylvania General Assembly. The current Driver License Compact comes within that same grant of police power to the various States and clearly does not involve any federal interest or encroach upon any federal prerogative. The Compact Clause of the United States Constitution is clearly not applicable to the Driver License Compact of 1961.

Since the Driver License Compact of 1961 relates to areas of traditional State control, does not involve the surrender of any sovereign powers by its member States and does not encroach upon any area of federal supremacy, the Bureau respectfully submits that the Driver License Compact is not one of the interstate agreements or compacts for which Congressional consent is required under the Compact Clause. If that is the case, the repeal of 23 U.S.C. §313 in 1966 had no impact upon the validity of the Driver License Compact and there is no legitimate federal issue upon which Koterba may seek a writ of certiorari to this Court.

CONCLUSION

For the foregoing reasons, the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, Respondent, asks that this Honorable Court deny the Petition for Writ of Certiorari filed by the Petitioner, Gregory F. Koterba.

Respectfully submitted,



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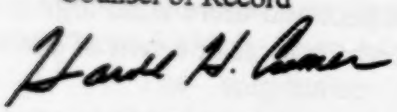

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